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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,813	04/04/2006	Maartje Ouwendijk-Vrijenhoek	C4331C	3668

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EXAMINER	
DELCOTTO, GREGORY R	

ART UNIT	PAPER NUMBER
1796	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/574,813	OUWENDIJK-VRIJENHOEK ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 April 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5* is/are pending in the application.

4a) Of the above claim(s) *5* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-5* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6/28/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-5 are pending. Claims 6-8 have been canceled. The preliminary amendment filed 4/3/08 has been entered.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-4, drawn to a liquid bleaching composition.

Group II, claim(s) 5, drawn to a method of bleaching a textile stain.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Claim 1, at least, is anticipated by or obvious over WO98/39406. Consequently, the technical feature which links claims 1-5, a liquid bleaching composition, does not provide a contribution over the prior art, so unity of invention is lacking.

During a telephone conversation with Rimma Mitelman on April 2, 2008 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-4. Affirmation of this election must be made by applicant in replying to this Office action. Claim 5 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO98/39406.

'406 teaches laundry or cleaning composition containing a catalytically effective amount of a transition metal bleach catalyst and at least about 0.1% of one or more laundry or cleaning adjunct materials. See Abstract. In preferred embodiments, the compositions contain 0.1% of a primary oxidant and at least about 0.001% of a bleach-promoting adjunct. See page 21, lines 1-20. Antioxidants may be in the compositions such as 2,6-di-tert-butyl-4-hydroxytoluene, ascorbic acid, etc. See page 88, lines 1-30. The compositions may be in any form such as a liquid, granular, tablet, etc. Liquid detergent compositions can contain water and other solvents as carriers in amounts from 5 to 90% by weight. The detergent compositions will preferably be formulated such that during use in aqueous cleaning operations, the wash water will have a pH of between about 6.5 and 11. Liquid dishwashing product formulations preferably have a pH between about 6.8 and 9.0 and laundry products are typically at pH 9 to 11. See page 134, lines 10-35. Perfumes may also be used in the compositions including ketones, aldehydes, etc. Finished perfumes typically comprise from about 0.01% to about 2% by weight of the detergent compositions and individual perfumery ingredients can comprise from about 0.0001% to about 90% of a finished perfume composition. Suitable perfumes include hexyl cinnamic aldehyde, etc. See page 130, line 30 to page 131, line 5.

'406 does not teach, with sufficient specificity, a composition having the specific pH containing a transition metal bleach catalyst, a perfume such as hexyl cinnamic

aldehyde, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition having the specific pH containing a transition metal bleach catalyst, a perfume such as hexyl cinnamic aldehyde, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '406 suggest a composition having the specific pH containing a transition metal bleach catalyst, a perfume such as hexyl cinnamic aldehyde, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Note that, the Examiner asserts that the broad teachings of '406 would suggest compositions having the same enhanced bleaching properties as recited by the instant claims because '406 teach compositions containing the same components in the same amounts as recited by the instant claims.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adriannse et al (US 2002/0198127) in view of WO98/34906.

Adriannse et al teach an aqueous liquid cleaning composition having a pH of at lest 7, preferably from 7 to 10, comprising from 1% to 90% by weight of surfactant, a proteolytic enzyme and a primary stabiliser therefor, the composition further comprising an organic substance which forms a complex with a transition metal, the complex being capable of catalysing bleaching of a substrate by atmospheric oxygen. See Abstract.

In order for a composition according to the invention to have bleaching performance, it is not necessary for it to contain a bleach or bleach system. See para. 129. The compositions can also further comprise a wide variety of optional ingredients which are suitable for use in liquid laundry compositions.

Adriaanse et al do not teach the use of a perfume such as hexyl cinnamic aldehyde or a composition having the specific pH containing a transition metal bleach catalyst, a perfume such as hexyl cinnamic aldehyde, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

'406 is relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a perfume such as hexyl cinnamic aldehyde in the composition taught by Adriaanse et al, with a reasonable expectation of success, because '406 teaches the use of hexyl cinnamic aldehyde in a similar cleaning composition and further, Adriaanse et al teach the use adjunct ingredients which would encompass perfume materials since perfumes are conventionally used in laundry detergent compositions and notoriously well-known to those of ordinary skill in the art.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition having the specific pH containing a transition metal bleach catalyst, a perfume such as hexyl cinnamic aldehyde, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Adriaanse et al in

combination with '406 suggest a composition having the specific pH containing a transition metal bleach catalyst, a perfume such as hexyl cinnamic aldehyde, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Note that, the Examiner asserts that the broad teachings of Adriaanse et al in combination with '406 would suggest compositions having the same enhanced bleaching properties as recited by the instant claims because Adriaanse et al in combination with '406 suggest compositions containing the same components in the same amounts as recited by the instant claims.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO98/39406 as applied to claims 1-3 above, and further in view of Adriaanse et al (US 2002/0198127).

'406 is relied upon as set forth above. However, '406 does not teach the use of the specific bleaching catalyst in addition to the other requisite components of the composition as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use the specific bleach catalyst as recited by instant claim 4 in the composition taught by '406, with a reasonable expectation of success, because Adriaanse et al teach the equivalence of the specific bleach catalyst as recited by instant claim 4 to other bleach catalysts as disclosed by '406 in a similar bleaching compositions.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 and 18 of copending Application No. 10/559781, claims 1-16 of 10/559962, and claims 1-16 of 10/559964. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-16 and 18 of copending Application No. 10/559781, claims 1-16 of 10/559962, and claims 1-16 of 10/559964 encompass the limitations of the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition having the specific pH containing a transition metal bleach catalyst, a perfume, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable

expectation of success and similar results with respect to other disclosed components, because claims 1-16 and 18 of copending Application No. 10/559781, claims 1-16 of 10/559962, and claims 1-16 of 10/559964 suggest a composition having the specific pH containing a transition metal bleach catalyst, a perfume, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-4 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of copending Application No. 10/559963 in view of WO98/39406.

Claims 1-5 of 10/559963 encompass all of the limitations of the instant claims except for the inclusion of a perfume such as hexylcinnamic aldehyde.

'406 is relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a perfume such as hexyl cinnamic aldehyde in the composition claimed by 10/559963, with a reasonable expectation of success, because '406 teaches the use of hexyl cinnamic aldehyde in a similar cleaning composition and further, 10/559963 claim the use of adjunct ingredients which would encompass perfume materials such as hexyl cinnamic aldehyde since perfumes are conventionally used in laundry detergent compositions and notoriously well-know to those of ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory R. Del Cotto/
Primary Examiner, Art Unit 1796

/G. R. D./
April 23, 2008